IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.351 OF 2006

1. M/s.Garden View Realtors Pvt.Ltd. & others. ... Petitioners

vs.

1. Vinodkumar Gupta & others. ... Respondents

Mr.Gaurav Joshi i/b. Ashwin Ankhad & Associates, for Petitioners.

Mr.M.P.S.Rao i/b. M/s.Thakordas & Madgavkar, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 9th October,2006

P.C.:-

1. By this petition filed under Section 9 of the Arbitration and Conciliation Act,1996, the petitioners are seeking interim order for disturbing possession of Respondent no.1 of that portion of the property which is described as Portion no.2 in paragraph 21 of the Award of the Arbitrator dated 24.4.2006. Paragraph 21 of the Award reads as under:-

"21. As mentioned hereinabove certain assets

under the 'Award' were described as MPG Estate which were allotted to Mahavir Prasad. One of the properties was a godown situate at Sitaram Mills. This property was taken on lease and was in occupation of 'Midday Newspaper.' The compensation for sublease was determined under an agreement and an amount of Rs.65 lakhs was deposited with the family. In view of the statement with Shantidevi, Pushpa and Shiksha Surekha, the leasehold rights are to be divided between Sushil and Vinod. Several efforts were made to recover possession from Midday after the expiry of the period under the agreement and ultimately Sushil and Vinod did recover possession. Prior to that date Sushil and Vinod visited and inspected the property and a rough sketch was prepared which reflects that godown No.61 is approximately about 8800 sq.ft. Vinod who prepared the sketch proposed the division of the godown in Portion No.1 and Portion No.2. Sushil was given the option o select either of the portions and Sushil selected Portion no.1 marked on the sketch. The area marked as Portion No.2 goes to the share of Vinod. There is dispute about the amount of compensation received and the distribution of that amount. As regards the division of the property, the two brothers have entered into an agreement. The sketch on which the two portions are marked and signed by Sushil and Vinod is hereto annexed and marked as Annexure No.9.

Fortunately with several efforts carried out at several meetings with Sushil and Vinod, the claims in respect of the immoveable properties allotted to Sushil and Vinod are sorted out."

It is thus clear that Sushil and Vinod had entered into an agreement for division of the property in two parts and as per the agreement of partition, portion no.1 was taken by Mr.Sushil who is one of the petitioners and portion no.2 was taken by respondent no.1 Mr.Vinod. Therefore, if the Award was made and Mr.Sushil has taken possession of portion no.1 it will be in consonance with the Award and not contrary to the Award. The admitted position is that the Award is not subjected to challenge before any Court. Therefore, in my opinion, it will not be appropriate for this Court to entertain the application under section 9 of the Act to make interim order which will run contrary to the consent award which is not yet subjected to any challenge. I do not find any substance in the contention of the learned Counsel appearing for petitioners that till the Award becomes a decree, the respondent no.1 could not have taken possession. Even assuming that the learned Counsel is right in making that submission, in my opinion, because the award is a consent award and because the respondent no.1 has taken possession of that portion of the property to which he is entitled to under the award, it will not be appropriate for the Court, under section 9 of the Act to make an order restraining him from remaining in possession of that property. Because such an order will go contrary to the consent award. The petition is therefore, disposed of.

2. At this stage prayer is made for continuation of ad-interim order which is presently operating. That ad-interim order was made directing the

parties to maintain status-quo because the petitioners have stated that petitioners have to file petition under Section 34 of the Act within a period of four weeks. That petition has not been filed yet. Thus, even today the Award is not under challenge and therefore, it will not be appropriate to continue the operation of ad-interim order. Ad-interim order is vacated. It must be clarified that it is the case of respondent no.1 that he never dispossessed Mr.Sushil from any portion of the property because according to him he was always in joint possession of the property.